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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,049	02/09/2001	Rikihiro Iida	10830-054001 / A36-129092	7560

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EXAMINER

JACKSON, CORNELIUS H .

ART UNIT	PAPER NUMBER
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2828

DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/781,049

Applicant(s)

IIDA, RIKIHIRO

Examiner

Cornelius H. Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Paul Ip

PAUL IP

SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Acknowledgment

1. Acknowledgment is made that applicant's Amendment, filed on 30 December 2002, has been entered. Upon entrance of the Amendment, claims 1 and 3 were amended. Claims 1-3 are now pending in the present application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Broutin et al. (6400737). Broutin et al. discloses a DFB laser driving device **Fig. 4** comprising an input unit (remote input to terminal **180**), an approximate temperature calculating section **126**, an output level variation calculating section **see col. 4, line 56-col. 5, line**

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19, an output level controlling section **160**, and a temperature controlling unit **see col. 4, lines 29-36**.

Regarding claim 2, Broutin et al. discloses inputting set values of a wavelength and a output level, **see col. 5, lines 22-44**; calculating an approximate temperature of the DFB laser based on the set values of the wavelength and output level; calculating an output level variation of the DFB laser on the approximate temperature; calculating a calculated value based on the output level variation and the set value of the output level; controlling the output level of the DFB laser based on the calculated value; calculating a set temperature of the DFB laser based on the calculated value and the set value of the wavelength; and controlling the temperature of the DFB laser based on the set temperature, **see col. 5, line 45-col. 9, line 43**.

Regarding claim 3, Broutin et al. discloses a storage medium and all the other stated limitations, **see col. 5, lines 22-44 and col. 9, lines 33-43**. Also note that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Response to Arguments

4. Applicant's arguments filed 30 December 2002 have been fully considered but they are not persuasive. Applicant argument are as follows:

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a. Broutin et al. (6400737) does not disclose "calculating an approximate temperature ... *based on the set values of the wavelength and output level*" or "calculating an output level variation ... based on the approximate temperature" as recited in claim 2.

b. Broutin et al. (6400737) does not disclose "approximate temperature calculating section" or "output level variation calculating section" as recited in claim 1.

c. Broutin et al. (6400737) does not disclose to "calculate an approximate temperature ... based on the set values of the wavelength and output level" or "calculate an output level variation ... based on the approximate temperature" as recited in claim 3.

Examiner reply to Applicant's argument are as follows:

a. Broutin et al. (6400737) does disclose "calculating an approximate temperature ... *based on the set values of the wavelength and output level*", **see col. 6, line 6-col. 7, line 5**, or "calculating an output level variation ... based on the approximate temperature", **see Fig. 3 and col. 5, line 51-col. 6, line 4**. Second, it should be noted that information received by the thermistor is based on the set values of the wavelength and output level, since the set values of the wavelength and output level are what controls the laser temperature as well. This change in temperature is read/obtained by the thermistor in its calculation of the approximate value of laser temperature. Third, Applicant failed to specify how the calculation is performed within the claim limitation. Finally, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the

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claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Ex parte Masham, 2 USPQ2d 1647 (1987).

b. Broutin et al. (6400737) does disclose "approximate temperature calculating section", **see col. 6, line 6-col. 7, line 5**, or "output level variation calculating section", **see Fig. 3 and col. 5, line 51-col. 6, line 4**. **See also reply above.**

c. Broutin et al. (6400737) does disclose to "calculate an approximate temperature ... based on the set values of the wavelength and output level", **see col. 6, line 6-col. 7, line 5**, or "calculate an output level variation ... based on the approximate temperature", **see Fig. 3 and col. 5, line 51-col. 6, line 4**. **See also reply to "a." above.**

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Levinson (5019769), Stayt, Jr. et al. (6389046), Bestwick et al. (6101210), Baba et al. (6229832) and Broutin et al. (6449077) all disclose (alone or in combination) the claimed invention.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cornelius H. Jackson whose telephone number is (703) 306-5981. The examiner can normally be reached on 8:00 - 5:00, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Ip can be reached on (703) 308-3098. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-7722 for regular communications and (703)308-7721 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.



chj
March 20, 2003



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